

ORDINANCE NO. \_\_\_\_-2012

AN ORDINANCE AMENDING CHAPTER 9A OF THE CODE OF ORDINANCES OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT TO PROHIBIT THE SALE AND USE OF CERTAIN FIREWORKS AND CONSUMER FIREWORKS IN FAYETTE COUNTY AND FURTHER AMENDING SECTIONS 9A-2, 9A-5, AND 9A-6 OF THE CODE OF ORDINANCES TO DELETE REFERENCES TO PERMANENT FIREWORKS RETAILERS; AMENDING SECTION 9A-3 OF THE CODE OF ORDINANCES TO DEFINE THE TERMS USE AND SALE, TO ALLOW THE USE AND SALE OF CONSUMER FIREWORKS AS DEFINED IN KRS 227.702(1), AND TO REQUIRE COMPLIANCE WITH FEDERAL, STATE AND LOCAL LAW; DELETING SECTION 9A-4 OF THE CODE OF ORDINANCES IN ITS ENTIRETY AND RENUMBERING SECTIONS 9A-5 THROUGH 9A-9 OF THE CODE; AMENDING SECTION 9A-5 OF THE CODE OF ORDINANCES TO DELETE CERTAIN PERMITS AND TO CHANGE THE SEASONAL RETAIL FIREWORKS FEE TO \$100.00 PER LOCATION; AMENDING SECTION 9A-6 OF THE CODE OF ORDINANCES TO SPECIFY JUNE 10<sup>TH</sup> THROUGH JULY 7<sup>TH</sup> AS THE TIME PERIOD FOR SEASONAL SALES; AND AMENDING SECTION 9A-8 OF THE CODE OF ORDINANCES TO INCREASE THE FINE FOR COMPANIES TO \$2,000.00, TO PROVIDE FOR UP TO SIX (6) MONTHS IMPRISONMENT, AND TO ESTABLISH MINIMUM FINES FOR USE OF FIREWORKS IN THE AMOUNTS OF \$250.00 FOR A FIRST OFFENSE, \$500.00 FOR A SECOND OFFENSE, AND \$1,000.00 FOR A THIRD OR GREATER OFFENSE; ALL EFFECTIVE ON DATE OF PASSAGE.

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BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Section 9A-2 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 9A-2. Definitions.

The following words, terms and/or phrases, when used in this chapter, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

- (a) "Ancillary fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as those terms are defined in section 13-1 of the code, and which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell only those types of fireworks described in KRS 227.702(1) and which such sales are ancillary to its primary course of business.
- (b) "Consumer fireworks" shall have the same meaning as in KRS 227.702.
- (c) "Fireworks" shall have the same meaning as in KRS 227.700 except it shall not include those types of fireworks described in KRS 227.702(1).
- (d) "Display fireworks" shall have the same meaning as in KRS 227.706.
- (e) "Seasonal fireworks retailer" shall mean any person, business entity, association, or corporation of any kind as

those terms are defined in section 13-1 of the code, which offers for sale, exposes for sale, sells at retail or wholesale, or keeps with intent to sell, only those types of fireworks described in KRS 227.702(1) and only between June 10 and July 7.

Section 2 - That Section 9A-3 of the Code of Ordinances be and hereby is amended to read as follows:

Sec. 9A-3. Use and sale of fireworks.

- (a) The use or sale of fireworks in Fayette County, including consumer fireworks and display fireworks, is prohibited at all times in Fayette County except as set forth herein. The term "use" includes igniting, firing, or exploding or possessing with the intent of use. The term "sale" includes the sale, offering or exposing for sale, or keeping or possessing with the intent to sell.
- (b) The prohibition on the use or sale of fireworks shall not apply to consumer fireworks as defined in KRS 227.702(1). However, the sale of these types of consumer fireworks shall be regulated pursuant to the Fireworks Enforcement Code.
- (c) The use or sale of display fireworks as defined in KRS 227.706 are only permitted subject to the applicable restrictions of state and federal law and with the written approval of the Commissioner of Public Safety or his designee and all other necessary permits. The government may require the applicant for a display fireworks permit to reimburse the government for all reasonable costs incurred which are associated with the display, including but not limited to the incurrence of overtime by government personnel.
- (d) Fireworks and consumer fireworks must be handled, stored, used, possessed, and sold in accordance with all applicable federal, state, and local law.

Section 3 - That Section 9A-4 of the Code of Ordinances be and is hereby deleted in its entirety.

Section 4 - That Section 9A-5 of the Code of Ordinances be and hereby is renumbered as Section 9A-4 and is amended to read as follows:

Sec. 9A-4. Permits.

In order to lawfully operate in Fayette County all seasonal fireworks retailers within Fayette County shall first obtain a "retail fireworks permit" from the commissioner of public safety or his designee. The application for a permit, the form of which shall also be approved by the urban county government's fire marshal, shall be submitted at least ten (10) business days prior to the applicant's desired effective date for the permit, and shall, at a minimum, require the following:

- (a) The applicant's name, phone number, and permanent address. In the event that the applicant desires to operate

multiple locations, a separate application does not have to be submitted for each location, however, each location must have a separate firework sales permit;

- (b) A detailed site plan for the proposed location(s), the address(es) of the proposed location(s), and contact information for the owner(s) of the proposed location(s) if other than the applicant;
- (c) Proof of current registration with the state fire marshal in accordance with the applicable provisions of KRS Chapter 227;
- (d) Proof that the applicant has submitted to the division of revenue, at least ten (10) days prior to transacting business in Fayette County, a completed transient merchant permit application pursuant to KRS 365.665 and has complied with all necessary requirements related to the statute, if applicable;
- (e) Proof that the applicant has obtained any necessary certificate(s) of occupancy from the government's division of building inspection, and if deemed necessary the applicant must also obtain verification from the government's division of planning that the proposed location on the application is zoned appropriately for the conduct of said business;
- (f) Proof that the applicant has obtained the necessary approval of the division of fire and emergency services' fire prevention bureau;
- (g) Proof that the applicant has obtained the appropriate occupational business license(s) from the division of revenue in accordance with chapter 13 of the code;
- (h) Proof of general liability insurance in an amount of not less than one million dollars (\$1,000,000.00) per occurrence which shall remain in effect at all times while engaged in the permitted activity; and
- (i) Payment of a permit fee in the amount of one hundred dollars (\$100.00) per location.

Section 5 - That Section 9A-6 of the Code of Ordinances be and is hereby renumbered as Section 9A-5 and is amended to read as follows:

Sec. 9A-5. Seasonal Fireworks Retailers.

In order to lawfully operate in Fayette County all seasonal fireworks retailers shall:

- (a) Obtain the necessary retail fireworks permit;
- (b) Only operate between June 10<sup>th</sup> and July 7<sup>th</sup> for each year permitted;
- (c) Prominently display a valid retail fireworks permit at each location and at all times during the hours of operation;
- (c) Comply with the applicable provisions of KRS Chapter 227, the International Building Code with Kentucky Amendments

(adopted edition), NFPA 1124 (National Fire Protection Association) and the Code of Ordinances, Lexington-Fayette Urban County Government;

- (d) Not allow any person under eighteen (18) years of age to sell any consumer fireworks;
- (e) Not give, offer for sale, or sell any consumer fireworks to any person under eighteen (18) years of age; and
- (f) Not offer for sale, expose for sale, or sell consumer fireworks except between the hours of 8:00 a.m. and 10:00 p.m.

Section 6 - That Section 9A-8 of the Code of Ordinances be and hereby is renumbered as Section 9A-7 of the Code.

Section 7 - That Section 9A-9 of the Code of Ordinances be and hereby is renumbered as Section 9A-8 of the Code and is amended to read as follows.

Sec. 9A-8. Penalties.

Any person convicted of violating the fireworks enforcement code shall be deemed guilty of a misdemeanor and shall be subject to a fine of not more than one thousand dollars (\$1,000.00) if a person, and not more than the greater of two thousand dollars (\$2,000.00) or double the amount of the violator's gain from the commission of the offense, if a corporation; or imprisonment for a period of time not to exceed six (6) months, or both. Each day a violation occurs shall constitute a separate offense.

- (a) The minimum fine for a conviction involving the sale of prohibited fireworks or consumer fireworks shall be five hundred dollars (\$500.00).
- (b) The minimum fine for a conviction involving the use of prohibited fireworks or consumer fireworks shall be as follows:
  - (1) two hundred fifty dollars (\$250.00) for the first offense within any twelve (12) month period of time;
  - (2) five hundred dollars (\$500.00) for the second offense within any twelve (12) month period of time; and
  - (3) one thousand dollars (\$1,000.00) for the third or greater offense within any twelve (12) month period of time.

Section 8 - If any section, subsection, sentence, clause, phrase, or portion of this Ordinance is for any reason held invalid or unlawful by a court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

Section 9 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL:

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MAYOR

ATTEST:

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CLERK OF URBAN COUNTY COUNCIL

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